Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
CONNECT AMERICA FUND	)	**WC Docket No. 10-90**
	)	
A NATIONAL BROADBAND PLAN FOR OUR FUTURE	)	**GN Docket No. 09-51**
	)	
ESTABLISHING JUST AND REASONABLE RATES FOR LOCAL EXCHANGE CARRIERS	)	**WC Docket No. 07-135**
	)	
HIGH-COST UNIVERSAL SERVICE SUPPORT	)	**WC Docket No. 05-337**
	)	
DEVELOPING A UNIFIED INTERCARRIER COMPENSATION REGIME	)	**CC Docket No. 01-92**
	)	
FEDERAL-STATE JOINT BOARD ON UNIVERSAL SERVICE	)	**CC Docket No. 96-45**
	)	
LIFELINE AND LINK-UP	)	**WC Docket No. 03-109**
	)	
UNIVERSAL SERVICE REFORM – MOBILITY FUND	)	**WT Docket No. 10-208**

COMMENTS OF THE INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE

The Independent Telephone & Telecommunications Alliance ("ITTA")[1] hereby submits its Comments in response to the intercarrier compensation ("ICC") reform items covered in Sections XVII.L-R of the November 18, 2011 *Further Notice of Proposed Rulemaking* ("*FNPRM*") issued by the Federal Communications Commission ("FCC" or "Commission") in the above-captioned proceedings.[2]

[1] ITTA's membership includes CenturyLink, Cincinnati Bell, Comporium Communications, Consolidated Communications, FairPoint Communications, Hargray Communications, HickoryTech Communications, SureWest Communications, and TDS Telecom.

[2] *In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal*

I. THE COMMISSION SHOULD REFRAIN FROM REFORMING ORIGINATING ACCESS AT THIS TIME

The Commission seeks comment on the proper transition to a bill-and-keep pricing methodology for rate elements that were not addressed in the *Order*, including originating access charges.[3] According to the Commission, it desires "to reach the end state for all [remaining] rate elements as soon as practicable, but with a sensible transition path that ensures that the industry has sufficient time to adapt to changed circumstances."[4]

As indicated in ITTA's previous comments, the Commission should defer originating access reform for a sufficient period of time to take into account the lessons learned from its implementation of terminating access reform.[5] Doing so would allow the Commission and industry to adjust to the regulatory and business environment that will result from terminating access reform and allow the Commission to make "corrections" to address any changes in the environment or unintended consequences of its previous considerable reform efforts. Moreover, it is not feasible to consider reductions in originating access rates at this time if the overall reform plan must operate within (and not exceed) the current $4.5 billion budget for the Connect America Fund ("CAF") program.

To the extent that the Commission determines to proceed with originating access reform in the near term, however, it should not adopt a mandatory bill-and-keep structure. ITTA

Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) ("*Order*" or "*FNPRM*," as appropriate).

[3] *FNPRM* at ¶¶ 1297-1314.

[4] *Id.* at ¶ 1297.

[5] *See* Comments of the Independent Telephone & Telecommunications Alliance, *et al*., WC Docket Nos. 10-90, *et al*. (filed Aug. 24, 2011), at 28.

remains a strong opponent of a mandatory bill-and-keep regime for intercarrier compensation.[6] ITTA maintains that Section 251(b)(5) of the Act does not support the Commission's authority to mandate bill-and-keep for terminating traffic in all situations. Further, the absence of statutory authority to adopt a mandatory bill-and-keep structure is even more pronounced in the originating access context. As the Commission itself has acknowledged, "section 251(b)(5) does not explicitly address originating access charges."[7] Rather, "that section refers only to transport and termination," and thus, does not confer authority on the Commission to regulate originating access charges, much less transition them to bill-and-keep.[8]

Moreover, it is critical that any reform of rate elements not addressed in the *Order* be accompanied by a recovery mechanism to ensure a reasonable glide path away from the current system.[9] As ITTA has previously stated, drastically reducing or eliminating intercarrier compensation with no alternative recovery mechanism would prevent carriers from providing new broadband services to more customers and would exacerbate differences between urban and rural rates and services.[10] Similarly, the Commission should not delegate implementation of originating access reform to the states absent assurances that any state-initiated reform would be accompanied by a state-sponsored and funded revenue recovery mechanism.

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[6] *See* Comments of the Independent Telephone & Telecommunications Alliance, WC Docket Nos. 10-90, *et al*. (filed Apr. 18, 2011), at 39-44; Reply Comments of the Independent Telephone & Telecommunications Alliance, WC Docket Nos. 10-90, *et al*. (filed May 23, 2011) ("ITTA May 23rd Reply Comments"), at 17-21.

[7] *FNPRM* at ¶ 1298.

[8] *Order* at ¶ 777. Notwithstanding the legal implications of mandating bill-and-keep for originating access charges, a bill-and-keep framework is especially inappropriate with respect to 8YY originated minutes. *See FNPRM* at ¶ 1303. Given the unique nature of such traffic, the basic principle underlying a bill-and-keep regime – that there is a balanced exchange of traffic between the originating and terminating carrier – does not exist. Accordingly, 8YY traffic may warrant special consideration should the Commission undertake reform of originating access.

[9] *See FNPRM* at ¶ 1302.

[10] ITTA May 23rd Reply Comments at 18.

The Commission requests comments on implementation issues that must be addressed to implement the mandatory bill-and-keep structure for terminating rate elements adopted in the *Order*, including whether it needs to prescribe points of interconnection ("POI") or otherwise revise its POI rules to facilitate the transition.[11] While establishing POIs is an important issue that must be resolved before any transition to bill-and-keep has been completed, the Commission should defer consideration of appropriate rules to a later date.[12] Various parties have appealed the Commission's adoption of mandatory bill-and-keep. The U.S. Court of Appeals for the Tenth Circuit will hear their challenges in the coming months and could find the bill-and-keep regime unlawful. Due to the uncertain nature of the bill-and-keep requirement, it would be prudent for the Commission to devote its resources at the present time to other less controversial matters that require attention.

Based on the Commission's assumption that carriers will increasingly rely on negotiated interconnection agreements rather than tariffs to set the terms on which traffic is exchanged, the Commission asks whether it should forbear from tariffing requirements to facilitate such arrangements.[13] ITTA believes that the Commission should continue to permit carriers the option to utilize tariffs while also allowing carriers to privately negotiate alternative arrangements. As the Commission has observed, this approach serves the public interest because it "provides the certainty of a tariffing option, which historically has been used for access

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[11] *FNPRM* at ¶¶ 1316-18.

[12] The Commission also seeks comment regarding whether parties anticipate potential arbitrage schemes as a result of maintaining the current POI rules until the transition to bill-and-keep is complete. *Id.* at ¶ 1316. ITTA submits that the new "phantom traffic" rules adopted by the Commission, which require the provision of appropriate identifiers and call signaling information and establish penalties for non-compliance, may be sufficient to protect carriers from "bad actors." The FCC should continue to monitor the effects of its new rules to determine whether further action may be necessary.

[13] *Id.* at ¶1322.

charges, while still allowing carriers to better tailor their arrangements to their particular circumstances and the evolving marketplace than would be accommodated by exclusively relying on 'one size fits all' tariffs."[14] Thus, the Commission should forbear from the tariffing requirements in Section 203 of the Act and Part 61 of its rules only to the extent necessary to enable carriers the flexibility to negotiate alternative arrangements when it makes business sense to do so.[15]

Finally, the Commission asks whether it should extend its interconnection rules to all telecommunications carriers to ensure a more competitively-neutral set of interconnection rights and obligations.[16] ITTA supports such action. Previously, in the *T-Mobile Order*, the Commission extended to wireless carriers the duty to negotiate interconnection agreements with incumbent local exchange carriers ("LECs") under the framework established in Section 252 of the Communications Act.[17] The Commission should extend the process adopted in the *T-Mobile Order* to all telecommunications carriers to ensure that all carriers have the same intercarrier compensation rights and obligations.

II. THE COMMISSION SHOULD RELAX ITS REGULATION OF END USER PRICING ONCE THE TRANSITION ENDS

The Commission seeks comment on how it should approach the long-term treatment of the Access Recovery Charge ("ARC") and whether it should be sunset once a price cap carrier's receipt of intercarrier compensation-replacement CAF support is eliminated.[18]

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[14] *Id*.

[15] 47 U.S.C. § 203; 47 C.F.R. §§ 61.31-.59.

[16] *FNPRM* at ¶ 1324.

[17] *See Developing a Unified Intercarrier Compensation Regime; T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, CC Docket No. 01-92, Declaratory Ruling and Report and Order, 20 FCC Rcd 4855 (2005).

[18] *FNPRM* at ¶¶ 1327-28.

The Commission's Access Recovery mechanism consists of both end user recovery through the ARC as well as explicit support through transitional ICC-replacement CAF funding. Because of the limits on the ARC, the Commission has acknowledged that "end user recovery alone will not provide the full recovery permitted… for many incumbent LECs."[19] Therefore, "to ensure a measured, predictable transition," the Commission determined that it was necessary to supplement end user recovery with transitional ICC-replacement CAF support.[20] ICC-replacement CAF support for price cap carriers has a defined sunset date in 2020, while the ARC declines over a longer period of time until it eventually reaches $0. The Commission requests comment on whether it should modify the phase-out of the ARC to sunset at the same time as ICC-replacement CAF support, allow it to continue to transition independently after the end of ICC rate reforms, or eliminate it altogether at the end of the transition.[21]

The Commission also asks whether existing subscriber line charges ("SLCs") are set at appropriate levels or whether they should be reduced and eventually eliminated as carriers increasingly transition to broadband networks.[22] The Commission questions whether regulated charges specific to voice (*e.g.*, SLCs) continue to be appropriate in a world where carriers increasingly are moving to IP networks where voice may only be one of many applications on that network.[23]

ITTA believes that once the ARC has been phased down and ICC-replacement CAF support has been phased out, the Commission should refrain from any further regulation of end-user pricing, including SLCs, by price cap or rate-of-return carriers. At that time, carriers should

[19] *Order* at ¶ 917.

[20] *Id*.

[21] *FNPRM* at ¶ 1327.

[22] *Id.* at ¶¶ 1330-33.

[23] *Id.* at ¶ 1332.

have the flexibility to recover lost ICC revenues through SLCs or other end-user charges, as they deem appropriate and as the competitive marketplace permits. By foregoing regulation of end user charges, the Commission will afford carriers the flexibility to respond to the marketplace and accurately reflect consumer and business demands. At the same time, competitive pressures can be relied upon to ensure that end user charges remain reasonable.

III. THE COMMISSION SHOULD REFRAIN FROM ADOPTING IP INTERCONNECTION RULES IN THIS PROCEEDING

The *FNPRM* requests comment on the appropriate policy framework and various other issues relating to IP-to-IP interconnection, in light of the reforms made in the *Order*.[24] As ITTA stated in its previous comments, the Commission should focus its attention and limited resources in this docket on the critical and complex issues directly related to intercarrier compensation that require immediate Commission action.[25]

Moreover, any steps the Commission may take to address IP interconnection in this or any other proceeding would be premature in light of independent industry efforts to develop comprehensive guidelines to govern IP-to-IP interconnection for all providers.[26] Adopting regulatory mandates before industry standards have been established could force providers to develop a patchwork of carrier-by-carrier technical requirements that may not reflect a technologically-neutral marketplace. And given that any standards adopted by the Commission

[24] *Id.* at ¶¶ 1335-98.

[25] *See* Comments of the Independent Telephone & Telecommunications Alliance, WC Docket Nos. 10-90, *et al*. (filed Jan. 18, 2012), at 5-8; Reply Comments of the Independent Telephone & Telecommunications Alliance, *et al*., WC Docket Nos. 10-90, *et al*. (filed Sept. 6, 2011), at 5-7.

[26] Specifically, the industry is working, through an Alliance for Telecommunications Industry Solutions ("ATIS") Task Force, on "developing an IP network-to-network interconnection guideline … that will provide physical configuration, protocol suite profile, operational information to be exchanged between carriers, and test suites to support conformance and interoperability testing." Comments of Verizon and Verizon Wireless, WC Docket No. 11-119 (filed Aug. 15, 2011), at 5.

would remain in place only until broader industry guidelines become effective, the effort to address IP interconnection in this rulemaking would be an inefficient diversion of Commission resources away from broadband deployment-related pursuits for no long-term benefit. As ITTA and others have urged, at this time the Commission should continue to rely on marketplace solutions, rather than heavy-handed regulation, to govern the PSTN-to-IP transition and interconnection arrangements among IP-based service providers.[27]

Should the Commission nonetheless decide to adopt IP interconnection requirements in this proceeding, it must make clear that such obligations would not mandate network upgrades. There should be no obligation for CAF recipients to interconnect on an IP basis when doing so would require the deployment of new technology to replace existing equipment and/or facilities that lack such capability. Such an obligation would be exceedingly costly to implement and contrary to established legal principles. As the U.S. Court of Appeals for the Eighth Circuit has held, the Commission's statutory authority relating to interconnection is limited in that the FCC can require access "only to an incumbent LEC's *existing* network – not to a yet unbuilt superior one."[28] Thus, no IP interconnection obligations should attach if a CAF recipient has not deployed IP equipment.

Furthermore, any IP interconnection regulations the Commission may adopt should apply to all network providers, not just incumbent LECs. Any regulatory obligations in Sections 251 and 252 of the Communications Act[29] that apply exclusively to one type of service provider (e.g., Section 251(c), which applies only to ILECs) therefore would be an inappropriate basis for any

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[27] *See, e.g.*, ITTA May 23rd Reply Comments, at 2, 8-16 ("the market should govern how… providers convert to IP networks); comments of Verizon and Verizon Wireless, WC Docket No. 11-119 (filed Aug. 15, 2011), at 1-8; AT&T Reply Comments, WC Docket Nos. 10-90, *et al*. (filed May 23, 2011), at 2, 8-16.

[28] *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 813 (8th Cir. 1997).

[29] 47 U.S.C. §§ 251, 252.

IP interconnection rules adopted by the Commission. A regulatory backstop is needed to address interconnection disputes should they arise, however. There is no need for the Commission to establish a new complaint process for such disputes. Rather, the Commission's existing complaint procedures and enforcement mechanisms are sufficient to allow parties to obtain relief in the event they are unable to resolve interconnection disputes privately.

CONCLUSION

For the reasons provided above, ITTA respectfully requests that the Commission relax its regulation of end user pricing once the Access Recovery mechanism has been phased out and refrain from reforming originating access charges and adopting IP-to-IP interconnection obligations at this time.

Respectfully submitted,

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